**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION**

PAMELIA DWIGHT, an individual; BENJAMIN DOTSON, an individual; MARION WARREN, an individual; AMANDA HOLLOWELL, an individual; DESTINEE HATCHER, an individual; and WILBERT MAYNOR, an individual,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia,

Defendant.

Civil Action No. 1:18-cv-2869-RWS

**PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

## I. Introduction

Section 2 of the Voting Rights Act ensures that minority groups have an equal opportunity to participate in the political process and elect candidates of their choice—whomever those candidates may be. It is no defense to suggest, as Defendant does, that enforcing the Voting Rights Act will benefit his political opponents; the rights of African-American voters do not receive any less protection by virtue of whom they choose to support, and elected officials are not exempt from the obligation to "pull, haul, and trade" to meet the needs and win the approval of the very people whom they seek to represent. *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994).[1] Plaintiffs, thus, filed this lawsuit to enforce their right to participate in the political process protected by Section 2, and challenge the continued use of a congressional districting plan that strategically carved African-Americans voters out of Georgia's 12th Congressional District ("CD 12"), dispersed them into neighboring districts, and imported white voters to change the district's racial composition.

[1] Plaintiff Marion Warren, although a Democrat, testified that he would vote for a different party if it had a platform that was responsive to African-American needs. Plaintiffs' Second Statement of Undisputed Material Facts ("Pls.' Second SUMF") ¶ 16 (Deposition of Marion Warren at 63:11-64:2, Second Declaration of Abha Khanna ("Second Khanna Decl.") Ex. 1).

Defendant seeks dismissal of Plaintiffs' claims but advances legally-flawed arguments that should be rejected outright. First, Plaintiffs' lawsuit is not barred by laches, as Defendant fails to establish that laches even applies to claims seeking prospective injunctive relief. Defendant also ignores the fact that Plaintiffs filed suit after only two consecutive elections in which the African-American-preferred candidate in CD 12 was defeated, Pls.' SUMF, Dkt. 66-2 at ¶ 64 (Palmer Report at 6–8, tbls. 1–5, Dkt. 66-8), and that Plaintiff Destinee Hatcher joined this lawsuit shortly after her return to Georgia after attending college out of state, Pls.' Second SUMF ¶¶ 13-14 (Deposition of Destinee Hatcher ("Hatcher Dep.") at 13:9–15:1, 37:15–20, Second Khanna Decl. Ex. 3; Declaration of Destinee Hatcher ("Hatcher Decl."), Second Khanna Decl. Ex. 4). Defendant further fails to acknowledge Plaintiffs' claim for declaratory relief, which is not subject to laches. *Sanders v. Dooly County, Ga.*, 245 F.3d 1289, 1291 (11th Cir. 2001) (per curiam).

Second, Plaintiffs' illustrative plans clearly demonstrate that African Americans in central-southeast Georgia are sufficiently numerous and geographically compact to form a majority in a congressional district. *See Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986). The illustrative majority-minority district in all three plans proposed by Plaintiffs are in the same location as the current CD 12; they comply with traditional redistricting principles; and they do not decrease the

black voting age population in CD 2 as compared to the benchmark, 2005 plan. Defendant's arguments to the contrary misapply the relevant legal standards and rely on the wrong metrics in calculating changes to the African-American population in CD 12 and CD 2.

Finally, the proportionality of majority-minority districts (compared to the total minority population) is "never dispositive," and is just one of at least seven factors or more to be considered by the Court under the totality of the circumstances test. *De Grandy*, 512 U.S. at 1025 (O'Connor, J., concurring); *see also League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 436 (2006) (*LULAC*). Defendant's argument for dismissal on this ground contradicts controlling caselaw and is meritless.

For these reasons, as explained further below, Plaintiffs respectfully request that the Court deny Defendant's Motion for Summary Judgment.

## II. The Doctrine of Laches Does Not Bar Plaintiffs' Claim

The equitable doctrine of laches is an affirmative defense; as such, the Defendant must prove its elements by a preponderance of the evidence, rather than advance unsupported inferences or conclusory assertions about its application to Plaintiffs' lawsuit. At the outset, Defendant fails to establish that laches even applies in a case, such as this, seeking prospective injunctive relief, and even if it did apply,

Defendant erroneously paints all Plaintiffs with a broad brush, ignoring the unique factual circumstances of their claims. Defendant also fails to distinguish between the consequences of an adverse ruling on the merits and the harm occasioned by Plaintiffs' alleged delay, relying solely on the former and ignoring the latter, which is the true focus of the prejudice inquiry. Finally, even if laches applied to this case, which it does not, it would not bar Plaintiffs' claim for declaratory relief.

### A. The Doctrine of Laches Does Not Apply to Voting Rights Actions Seeking Prospective Injunctive Relief.

Because laches "may not be used as a shield for future, independent violations of the law," *Cheshire Bridge Holdings, LLC v. City of Atlanta, Ga.*, No. 1:15-cv-3148-TWT, 2018 WL 279288, at *9 (N.D. Ga. Jan. 3, 2018) (quoting *Envtl. Def. Fund v. Marsh*, 651 F.2d 983, 1005, n.32 (5th Cir. 1981)), it should not be used to deny Plaintiffs their right to an undiluted vote in a *future* election. *Cf. Peter Letterese & Assoc., Inc. v. World Inst. of Scientology Enters.*, 533 F.3d 1287, 1321 (11th Cir. 2008) ("[L]aches serves as a bar only to the recovery of retrospective damages, not to prospective relief"). This reasoning has led several federal courts—including in Georgia—to hold that laches does not apply to voting rights claims seeking injunctive relief. *Miller v. Bd. of Comm'rs of Miller Cty.*, 45 F. Supp. 2d 1369, 1373 (M.D. Ga. 1998); *see also Garza v. Cty. of L.A.*, 918 F.2d 763, 772 (9th Cir. 1990) (same); *Smith v. Clinton*, 687 F. Supp. 1310, 1312–13 (E.D. Ark. 1988) (same).

Courts in two other recent redistricting (partisan gerrymandering) cases reaffirmed this principle. Just last month, the Eastern District of Michigan ruled that laches did not apply to voting-rights claims seeking declaratory and injunctive relief. *League of Women Voters of Michigan v. Benson*, No. 2:17-CV-14148, 2019 WL 1856625, at *25 (E.D. Mich. Apr. 25, 2019). And last year, the Southern District of Ohio reasoned that because the plaintiffs were seeking prospective relief, not "a remedy for any harm that they alleged occurred prior to the filing of their lawsuit," laches could not apply. *Ohio A. Philip Randolph Institute v. Smith*, 335 F. Supp. 3d 988, 1002 (S.D. Ohio 2018) (citing *Nartron Corp. v STMicroelectronics, Inc.*, 305 F.3d 397, 412 (6th Cir. 2002)).

As several of these courts have explained, voting-rights plaintiffs' injuries are "ongoing" because each election operated under an unlawful regime imposes a new, discrete injury. *Garza*, 918 F.2d at 772; *Smith*, 687 F. Supp. at 1312–13. This reasoning applies equally when there is one election left in a redistricting cycle. *Luna v. Cty. of Kern*, 291 F. Supp. 3d 1088, 1144 (E.D. Cal. 2018) (Section 2 Voting Rights Act case not barred by laches because "plaintiffs have demonstrated an ongoing violation of § 2 of the Voting Rights Act," where one election remained before already-scheduled redistricting).

Contrary to Defendant's assertion, the Eleventh Circuit has yet to resolve directly whether laches applies to voting rights claims seeking prospective injunctive relief. The Eleventh Circuit's ruling in *Sanders*, merely stated that the district court did not abuse its discretion in finding that the elements of laches were met. 245 F.3d at 1291. Defendant, however, misquotes *Sanders*, falsely attributing to that opinion the statement that "[r]edistricting challenges are subject to the doctrine of laches because of the ten-year expiration date of electoral districts." Mot. at 10. That quote appears nowhere in the *Sanders* opinion, and the Eleventh Circuit has said no such thing. The *Sanders* ruling simply does not bind the Court to apply laches here.

Nor should the Court seek guidance from the non-binding decisions of other jurisdictions upon which Defendant relies. In *White v. Daniel*, 909 F.2d 99, 103 (4th Cir. 1990), plaintiffs filed suit months *after* the last election under the challenged plan took place, and over seventeen years after the challenged plan was adopted. The court's ruling in that case relied in part on the recognition that "court-ordered reapportionment . . . would be completely gratuitous[] because there are no elections scheduled" before the next redistricting. *Id.* at 104. While these equitable considerations counseled against judicial relief in *White*, they stand in stark contrast to Plaintiffs' requested relief ahead of the 2020 elections.

Similarly, *Chestnut v. Merrill* is neither controlling nor instructive. There, an Alabama district court concluded that laches applied to a redistricting action because of the ten-year expiration date of electoral districts, yet did not explain why this fact warrants departure from the Eleventh Circuit's admonition that "laches serves as a bar only to the recovery of retrospective damages, not to prospective relief." *Peter Letterese & Assocs.*, 533 F.3d at 1321. While the Alabama court relied on *Sanders*, which, as explained above, did not address the question at hand, binding precedent before and after *Sanders* establishes that laches is inapplicable to such claims. *See, e.g.*, *Envtl. Def. Fund*, 651 F.2d at 1005, n.32[2]; *Peter Letterese & Assocs.*, 533 F.3d at 1321. The Court should therefore follow the Eleventh Circuit's clear statement on the specific question presented here—whether laches bars prospective injunctive relief—rather than infer, as Defendant does, that the Eleventh Circuit silently overruled prior precedent by implication. *Cf. Main Drug, Inc. v. Aetna U.S. Healthcare, Inc.*, 475 F.3d 1228, 1230 (11th Cir. 2007) (refusing to "extrapolat[e] from [an opinion's] implications a holding on an issue that was not before that Court in order to upend settled circuit law"); *In re Air Crash Off Long Island, NY, on July*

[2] *Environmental Defense Fund v. Marsh* was decided on July 13, 1981, and is thus binding on this Court. *See, e.g.*, *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

*17, 1996*, 209 F.3d 200, 211 (2d Cir. 2000) ("[P]arenthetical reference, in a case that did not involve the [issue before the court] cannot be read to overrule the clear statements of this court . . . .").

As the state official responsible for promoting and supporting accurate, fair, open, and secure elections for the citizens of Georgia, Defendant can hardly dispute the significance of each and every election, whether it is the first held in a redistricting cycle or the last. The November 2020 congressional elections will have very real consequences for Georgia residents—and impose very real injury on Plaintiffs.

### B. Defendant Cannot Establish that Plaintiffs Unreasonably Delayed in Filing This Lawsuit.

Even if the affirmative defense of laches applied here, Defendant has not met his burden of proving any of its elements: (1) a delay in asserting a right or claim, which (2) was not excusable, and (3) caused undue prejudice to defendant. *AmBrit, Inc. v. Kraft, Inc.*, 812 F.2d 1531, 1546 (11th Cir. 1986). In his attempt to demonstrate an unreasonable delay, Defendant ignores key factual distinctions among the individuals that filed this lawsuit and argues generally that redistricting plaintiffs should know they have a provable claim immediately upon passage of a plan. But the Eleventh Circuit has repeatedly rejected this "sue first and ask questions later" approach to laches. *Kason Indus. Inc. v. Component Hardware*

*Group, Inc.*, 120 F.3d 1199, 1206 (11th Cir. 1997). Instead, "a plaintiff's reasonable need to fully investigate its claims" excuses delay; to hold otherwise "would create a powerful and perverse incentive for plaintiffs to file premature and even frivolous suits to avoid the invocation of laches." *Black Warrior Riverkeeper, Inc. v. U.S. Army Corps of Eng'rs*, 781 F.3d 1271, 1285 (11th Cir. 2015).[3]

Defendant's already unpersuasive argument that Plaintiffs should have known their claim was ripe *before* the 2012 election is especially weak when applied to Plaintiffs Pamelia Dwight and Wilbert Maynor, both of whom live in CD 12 where the African-American-preferred incumbent, John Barrow, was able to hold on to his seat until the 2014 general election. Pls.' Second SUMF ¶¶ 6, 7 (Palmer Report at 7); *id.* at ¶ 15 (Second Khanna Decl. Ex. 2, Deposition of Pamelia Dwight at 6:13-20). It was not until the 2014 election, at the earliest, that the inability of African Americans to elect their preferred candidates in CD 12 materialized. Pls.' SUMF ¶ 64 (Palmer Report at 6–8, tbls. 1–5). Plaintiffs' decision to file this lawsuit after *just two* elections in which their preferred candidates lost is not the type of

[3] *See also Thomas v. Bryant*, 366 F. Supp. 3d 786 (S.D. Miss.), appeal dismissed, 755 F. App'x 421 (5th Cir. 2019) (rejecting laches defense in Section 2 Voting Rights Act lawsuit, filed in July 2018, challenging map adopted in 2012); *Jeffers*, 730 F. Supp. at 203, *aff'd*, 498 U.S. 1019 (1991) (action not barred by laches despite only one election remaining before redistricting and nine years since most recent census); *Agre v. Wolf*, Case No. 2:17-cv-04392-MMB, ECF No. 83 (E.D. Penn. Nov. 16, 2017) (rejecting laches defense in lawsuit, filed in 2017, challenged 2011 map).

unreasonable delay contemplated by the equitable doctrine of laches, *see, e.g.*, *Davis v. Bandemer*, 478 U.S. 109, 135 (1986) (plurality opn.) ("Relying on a single election to prove unconstitutional discrimination is unsatisfactory."), and distinguishes the timing of this lawsuit from the alleged delay in *Chestnut*. 2019 WL 1376480, at *6; *see also Householder*, 2019 WL 1969585, at *128–29 ("[I]t would have been unwise for Plaintiffs to bring [an] action" challenging a map after just one set of election results).

Indeed, two key elements of Plaintiffs' claim require proof that specific events occur with regularity: (1) that the "minority group members usually vote for the same candidates," and (2) the presence of "a white bloc vote that normally will defeat" the minority group's candidate of choice. *Gingles*, 478 U.S. at 56. When applied to Plaintiffs Dwight and Maynor, Defendant essentially argues that Plaintiffs must file suit even before the white bloc defeats their candidate of choice, completely disregarding a plaintiff's need to investigate and prepare her legal claims. *See Smith*, 687 F. Supp. at 1313 (denying laches argument based on time needed to develop evidence of Voting Rights Act violation); *Benson*, 2019 WL 1856625, at *26 (holding voters "did not act unreasonably by waiting until three elections had been held to sue"); *Householder*, 2019 WL 1969585, at *129 (denying laches defense where case was filed seven years after map went into effect and after four elections

had passed, in part because "more data . . . give[s] us greater confidence in our finding"); *cf. LULAC*, 548 U.S. at 420 (opinion of Kennedy, J.) (rejecting challenge to recently adopted map where only one election had taken place and noting that the Supreme Court is "wary" of adopting a standard that would assess "a hypothetical state of affairs").

Finally, Defendant's one-size-fits-all theory of laches falls apart when applied to Plaintiff Destinee Hatcher. Ms. Hatcher registered to vote for the first time in 2014 but attended college out-of-state until shortly before this case was filed. Pls.' Second SUMF ¶ 13 (Hatcher Dep. at 13:9–11, 14:21–15:1); *id.* (Hatcher Decl.). She only decided to pursue this lawsuit "[w]hen [she] moved back home and saw that [her] community was basically being neglected. . . . just a lot of neglect for people that looked like [her] as African-Americans." *Id.* at ¶ 14 (Hatcher Dep., 14:21–15:1, 37:15–20).

In arguing that Ms. Hatcher should have sued immediately upon registering and voting in 2014, Defendant fails, once again, to appreciate that Plaintiffs' lawsuit is not just about wins at the ballot box. Rather, "[t]he Voting Rights Act is concerned with political responsiveness," *United States v. Marengo Cty. Comm'n*, 731 F.2d 1546, 1573 (11th Cir. 1984), which is also one of the factors that may be considered under Section 2's totality of the circumstances test. *See, e.g., Ga. State Conf. of*

*NAACP v. Fayette Cty. Bd. of Comm'rs*, 952 F. Supp. 2d 1360, 1368 (N.D. Ga. 2013). This lack of responsiveness "for people that looked like [her]," which drove Ms. Hatcher to pursue this lawsuit in the first place, Pls.' Second SUMF ¶ 14 (Hatcher Dep. at 37:15–20), became apparent upon her return to Georgia shortly before this case was filed. *Id.* (Hatcher Dep. at 14:14–15:1, 37:15–20). Like all litigants, Ms. Hatcher is not required to "search and destroy every conceivable potential [voting rights violation]," *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1326 (11th Cir. 2019) (citation omitted); she is, however, entitled to investigate and prepare her claim. *Black Warrior*, 78 F.3d at 1285. Laches is plainly inapplicable here.

### C. Defendant Has Not Identified Any Undue Prejudice Attributable to the Alleged Delay in Filing this Lawsuit.

Compounding the absence of any unreasonable delay, Defendant has also failed to identify prejudice caused by the *timing* of this lawsuit. To satisfy this element, Defendant must demonstrate harm that is attributable specifically to Plaintiffs' alleged delay, and courts have drawn a clear distinction between prejudice caused by the delay in asserting one's rights and "the consequences of an adverse decision on the merits." *Black Warrior*, 781 F.3d at 1286; *see also Jeffers*, 730 F. Supp at 203 ("[T]he expense, trouble, and disruption [of redistricting] are not a consequence of plaintiffs' delay in filing"; rather, they "would have occurred

whenever the suit was filed"). In other words, the party invoking laches must establish that he or she was "made significantly worse off because [Plaintiffs] did not bring suit as soon as [they] had the opportunity to do so." *Black Warrior*, 781 F.3d at 1286.

What Defendant describes as "prejudice" are simply consequences of an adverse ruling on a Section 2 claim that would have occurred even if the lawsuit were filed in 2011. He contends that Plaintiffs' action would result in multiple redistrictings within a short period of time and based on allegedly outdated census figures. Mot. at 13–14. But that would be true of a successful claim filed earlier in the decade, which potentially would have required back-to-back redistricting in 2011 and 2012 or 2013. *See Shuford v. Ala. State Bd. of Educ.* 920 F. Supp. 1233, 1239–40 (M.D. Ala. 1996) (rejecting laches defense, finding "defendants have not shown a reason why it would be more difficult to litigate a § 5 claim" at the time plaintiffs filed suit "than it would have been if the claim had been raised at the time the [change in election practice or procedure occurred]"). In *Cox v. Larios*, for instance, the court's 2004 invalidation of Georgia's 2002 state legislative reapportionment plan resulted in the State redistricting in both 2002 *and* 2004. 300 F. Supp. 2d 1320 (N.D. Ga. 2004), *aff'd* 542 U.S. 947 (2004). "Back-to-back" redistricting—even without

the benefit of up-to-date census data[4]—is an inevitable consequence of protecting the right to vote when the legislature fails to get it right the first time. *Pac for Middle Am. v. State Bd. of Elections*, No. 95 C 827, 1995 WL 571887, at *5 (N.D. Ill. Sept. 22, 1995) (rejecting laches defense and holding that "defendants[']contention that all of the congressional districts may need to be redrawn is not a prejudicial consequence of the plaintiffs' delay" but rather "the natural and inevitable result of a decision in plaintiffs' favor").

It is neither prejudicial nor uncommon to redraw electoral districts in Georgia, even late in the decennial cycle. In fact, the General Assembly voluntarily initiated and implemented the same types of mid-census redistricting efforts for state legislative districts that Defendant now claims would unduly burden the State's election apparatus. Following the 2010 census, the General Assembly redrew or amended its State House of Representatives map in 2011, 2012, 2015, and proposed but failed to pass another modified plan in 2017. *See Thompson v. Kemp*, 309 F.

[4] These cases also demonstrate that the absence of up-to-date Census data should not preclude a court from affording relief to African-American voters who have been denied the right to participate equally in the political process. It would make little sense to reject a remedial map as "prejudicial" based on its use of 2010 Census data, while permitting the continued use of an unlawful districting plan that relies on the same 2010 Census data. Further, it is well-recognized that prior Census figures are "the relevant data for assessing a claim under Section [2]." *Dickinson v. Ind. State Election Bd.*, 933 F.2d 497, 503 (7th Cir. 1991).

Supp. 3d 1360, 1362 (N.D. Ga. 2018). Aside from vague references to a "new voting system," Mot. at 13—the import of which is not explained anywhere in the record—Defendant provides no reason why the relief requested here would be any more burdensome than the mid-cycle redistricting Georgia already engages in, or a court-ordered redistricting implemented at any other time in the decennial cycle.

### D. Defendant's Laches Argument Does Not Apply to Plaintiffs' Claim for Declaratory Relief.

Finally, even if the Court finds that laches bars Plaintiffs' claim for injunctive relief, it does not bar Plaintiffs' claim for declaratory judgment. *See Sanders*, 245 F.3d at 1291; *Chestnut*, 2019 WL 1376480, at *7–8. As the Eleventh Circuit acknowledged in *Sanders*, none of the grounds for prejudice associated with late-decade redistricting would apply to a claim for a declaration that the current redistricting map is unlawful. *See Sanders*, 245 F.3d at 1291. Therefore, notwithstanding Defendant's laches defense, Plaintiffs' claim for declaratory judgment precludes the dismissal of this action.

## III. Plaintiffs' Illustrative Plans, Which Include a Compact, Majority-Minority District in Central and Southeast Georgia, Satisfy *Gingles* 1

Plaintiffs satisfied the first *Gingles* precondition ("*Gingles* 1") by submitting illustrative plans of a compact majority-minority district in central and southeast Georgia that comply with traditional redistricting principles. The *Gingles* 1 inquiry

presents two questions. The first is a straightforward numerical inquiry: do African Americans "make up more than 50 percent of the voting-age population" in Plaintiffs' proposed CD 12? *Bartlett v. Strickland*, 556 U.S. 1, 18 (2009). The second asks whether Plaintiffs can offer a majority-minority district that complies with traditional redistricting principles. *See Ga. State Conference of NAACP*, 952 F. Supp. 2d at 1364 ("[A] plan is compact where it is designed 'consistent with traditional districting principles.'") (quoting *Davis v. Chiles*, 139 F.3d 1414, 1425 (11th Cir. 1998)). Each of Plaintiffs' three proposed plans satisfy both inquiries. *See* Pls.' Mot. at 10–19.

**A. Plaintiffs' Illustrative Plans Do Not Result in Retrogression.**

Defendant does not and cannot dispute that the black voting age population ("BVAP") in all three illustrative districts exceeds 50 percent. Instead, he distorts the relevant legal standards and commits a series of critical legal errors, to arrive at the erroneous conclusion that Plaintiffs' illustrative plans would lead to "retrogression" in a different congressional district by reducing the percentage of black, *registered* voters in CD 2. This argument lacks merit for several reasons.

First, the illustrative plans do not result in any "retrogression" in CD 2 because, as Defendant admits, African Americans in that district have consistently elected their candidate of choice, since 1992, with significantly lower black voting

age populations. Mot. at 18; Pls.' Second SUMF ¶ 2 (Second Khanna Decl. Ex. 5, Deposition of Gina H. Wright ("Wright Dep.") at 160:8-161:19). While Defendant appears to suggest that any decrease in African-American voters in CD 2 would be retrogressive, that argument collapses under well-settled precedent that defines the principle of retrogression as a "decrease [in] African-American voters' opportunities to elect candidates of choice." *Georgia v. Ashcroft*, 204 F. Supp. 2d 4, 12 (D.D.C. 2002). Tellingly, Defendant's Motion makes no fewer than five references to "retrogression," but conspicuously fails to indicate whether the increase in the minority population in CD 2 was actually necessary to maintain the ability to elect their preferred candidate, or whether the changes to CD 2 under Plaintiffs' illustrative plans actually diminish the ability of African Americans to elect their preferred candidates. Defendant's expert, the architect of the 2011 Plan, testified that it does not, and she *did not* increase the African American registered voter population in CD 2 to comply any legal requirement. *See* Pls.' Second SUMF ¶ 3 (Wright Dep. at 92:4-20, 164:14-21).

Piling one legal error on another, Defendant's retrogression argument relies on the wrong benchmark to assess changes to the African-American population in CD 2. In determining whether a plan is retrogressive, the appropriate benchmark is the last *legally-enforceable* plan. *See* 28 C.F.R. § 51.54 (Procedures for the

administration of Section 5 of the Voting Rights Act); *see also Colleton Cty. Council v. McConnell*, 201 F. Sup. 2d 618, 644 (D.S.C. 2002); *Bone Shirt v. Hazeltine*, 387 F. Supp. 2d 1035, 1042 (D.S.D. 2005). Defendant's Motion incorrectly compares the percentage of African-American registered voters in CD 2 under Plaintiffs' illustrative plans with the corresponding statistics under the current plan. *See Johnson v. Miller*, 929 F. Supp. 1529, 1567 (S.D. Ga. 1996) (finding an unconstitutional 1992 plan inappropriate as a benchmark for assessing retrogression in a remedial plan and relying on the 1982 plan instead). But here, the 2005 plan—which would be the last legally-enforceable comparator should the Court find the current plan violates Section 2—is the appropriate benchmark for any retrogression analysis. *See id*. Allowing a state to use its own unlawful plan as a benchmark would give jurisdictions license to pack districts in violation of the Voting Rights Act, and then turn around and oppose as retrogressive all remedial measures that unpack those districts, thereby entrenching the dilution of minority votes.

Not only is the 2011 Plan the wrong benchmark for comparison, the percentage of registered African Americans reported in Defendant's Motion is the wrong statistic.[5] The Eleventh Circuit has made clear that "the proper statistic for

[5] Defendant's calculations of the percentage of registered voters, moreover, are incorrect. In calculating the proportion of registered voters that are African

deciding whether a minority group is sufficiently large and geographically compact is voting age population" ("BVAP"). *Negron v. City of Miami Beach, Fla.*, 113 F.3d 1563, 1568-69 (11th Cir. 1997) ("[E]very member of the *Solomon* Court agreed that the district court had erred in focusing on registered voter statistics instead of voting age population statistics."); *see also Bartlett v. Strickland*, 556 U.S. 1, 13 (2009) ("In majority-minority districts, a minority group composes a numerical, working majority of the voting-age population."); *Ga. State Conf. of NAACP v. Fayette Cty. Bd. of Comm'rs*, 996 F. Supp. 2d 1353, 1360 n.7 (N.D. Ga. 2014) (citing cases). BVAP is also the appropriate benchmark statistic when assessing whether a remedial plan complies with the non-retrogression principle. *See Smith v. Cobb Cty. Bd. of Elections & Registrations*, 314 F. Supp. 2d 1274, 1297-98 (N.D. Ga. 2002) ("[T]he appropriate benchmark should be the BVAP . . .").[6]

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American in the relevant districts, Ms. Wright erroneously assumed that *none* of the voters whose race is listed as "unknown"—a group of people constituting roughly ten percent of the state's voters—are African American. Second Cooper Report ¶ 15. There is no basis for that assumption, and as a result, Ms. Wright significantly underestimates this figure. *See* Pls.' Second SUMF ¶ 9 (Second Khanna Decl. Ex. 6, Deposition of William Cooper at 143:1–145:1).

[6] Notably, in a prior submission to this Court, Defendant stressed that *Gingles* 1 "requires that Plaintiffs constitute a majority of the voting age population in a geographically compact district" and argued that Plaintiffs' claims should be dismissed for failure to allege that CD 12 can be drawn "in a manner that increases the African-American *voting age population* above 50% . . . ." Def.'s Mem. in Supp. of Mot. to Dismiss, Dkt. 13-1, at 6, 7 (emphasis in original).

After sifting through the legal errors in Defendant's retrogression analysis, it becomes clear that Plaintiffs' illustrative districts satisfy *Gingles* 1 and do not result in any retrogression. As the chart below demonstrates, all three illustrative plans increase the BVAP in CD 12, based on 2010 census data, without any corresponding decrease in CD 2.

| District | 2005 Plan | Plaintiffs' Plan 1 | Plaintiffs' Plan 2 | Plaintiffs' Plan 3 |
|---|---|---|---|---|
| CD 2 | 46.84% | 46.92% | 47.03% | 46.89% |
| CD 12 | 41.50% | 50.32% | 50.25% | 50.20% |

Pls.' Second SUMF ¶ 8 (Cooper Report, fig. 10, Exs. H-2, I-2, Dkt. 66-4; Cooper Rebuttal Report, Ex. B-2, Dkt. 66-6). There is no reasonable dispute that African Americans in CD 2 can elect their candidates of choice under Plaintiffs' illustrative plans, nor is there any question that the addition of African-American voters to CD 2 under the current plan was unrelated to any concern about their voting strength. *See* Pls.' Second SUMF ¶¶ 1-3 (Wright Dep. 92:4-20; 161:4-19, 164:15-21).

### B. The African-American Communities in Plaintiffs' Illustrative Plans Are Sufficiently Numerous and Geographically Compact to Satisfy *Gingles* 1.

Defendant further contends that the African-American community in Plaintiffs' illustrative CD 12 is not geographically compact, yet fails to identify or propose any legal standard for assessing the community's compactness. As Plaintiffs explained in their Memorandum in Support of Plaintiffs' Motion for Partial

Summary Judgment, a proposed district's compliance with the numerosity requirement and with traditional redistricting principles is sufficient to satisfy *Gingles* 1. (Dkt. 66-1, at 12-19); *see also Ga. State Conf. of NAACP*, 952 F. Supp. 2d at 1364 (acknowledging that "a plan is compact [under *Gingles* 1] where it is designed 'consistent with traditional districting principles'") (quoting *Chiles*, 139 F.3d at 1425). For the reasons set forth in Plaintiffs' Motion for Partial Summary Judgment ("Pls.' Mot."), the illustrative plans comply with traditional districting principles and satisfy the *Gingles* 1 compactness inquiry. Pls.' Mot. at 12-19.

Defendant, moreover, cites no authority for the proposition that Plaintiffs must identify a uniting factor for every African-American population center that appears in an illustrative district. In fact, the Supreme Court's decision in *LULAC* rejects this overly-restrictive interpretation of *Gingles* 1. The Court "accept[ed] that in some cases members of a racial group in different areas—for example, rural and urban communities—could share similar interests and therefore form a compact district if the areas are in reasonably close proximity." *LULAC*, 548 U.S. at 435.The Court also "emphasize[d] it is the enormous geographical distance separating the Austin and Mexican-border communities, *coupled* with the disparate needs and interests of these populations—*not either factor alone*—that renders [the proposed district] noncompact for § 2 purposes." *Id.* (emphasis added). Here, the minority

communities in the illustrative districts are all located in central-southeast Georgia, in the same region that CD 12 has traditionally occupied. Defendant's expert, Gina H. Wright, who drew the current congressional districting plan, agrees; she testified that Plaintiffs' illustrative CD 12s are "in the same east central Georgia [location] that the current [CD] 12 is." Pls.' Second SUMF ¶ 10 (Wright Dep. 49:16-51:6; 244:8-14). Defendant's Motion provides no plausible basis to suggest that the African-American communities in the illustrative districts have disparate needs or are too far apart to form a compact CD 12.

What is more troubling is the double-standard that Defendant implicitly adopts for the State of Georgia, and for minority plaintiffs seeking relief from a districting plan that dilutes their votes. Defendant's expert, Ms. Wright—who, again, drew the current congressional districting plan—testified that "on a congressional map, the communities of interest is not as high of a priority . . . because they are so large in size." *Id.* at ¶ 11 (Wright Dep. 65:22-66:4). She further clarified: "I don't know that communities of interest is normally a conversation that's being held about a congressional map." *Id.* at ¶ 12 (Wright Dep. 66:20-22). Her testimony not only illustrates the unfounded nature of Defendant's criticisms, it suggests that identifying common interests among all population centers is not important to the State when adopting a plan that cracks African-American communities, *see* Pls.'

Mot. at 2–3, yet it stands as a barrier to relief for Plaintiffs who seek to enforce the Voting Rights Act. None of the authorities presented by Defendant endorses such a result.[7]

## IV. Defendant's Attempt to Circumvent Section 2's Totality of the Circumstances Test Is Legally Erroneous

Despite acknowledging the Supreme Court's repeated admonitions that proportionality is not dispositive in Section 2's totality of the circumstances test, Defendant argues, *in a dispositive motion*, that proportionality ends this case. This argument is particularly puzzling in light of his admission that "proportionality is not a safe harbor for a jurisdiction," Mot. at 23, and Supreme Court precedent that rejects this exact claim. *See De Grandy*, 512 U.S. at 1017–18 (rejecting state's argument that "no dilution occurs whenever the percentage of single-member

[7] To the extent Defendant suggests that the illustrative plans are racial gerrymanders, Mot. at 20 n.5, that argument fails because a plaintiff need not demonstrate that a proposed remedy district is not a racial gerrymander to satisfy the *Gingles* preconditions. *See, e.g.*, *Ga. State Conf. of NAACP*, 952 F. Supp. 2d at 1365 (rejecting defendant's argument that the court was required to determine if proposed map amounted to racial gerrymander to satisfy *Gingles* preconditions). In any event, Section 2 "require[s] plaintiffs to show that it is possible to draw majority-minority voting districts," so race will "certainly" be a factor in designing proposed subdistricts. *Chiles*, 139 F.3d at 1424, 1426. But as discussed above, the districts were drawn in compliance with traditional districting principles, and there is no evidence that those principles were subordinated to race. Defendant's claim to the contrary that "Plaintiffs only considered race" citing Cooper Dep. at 105:24-106:12 is plainly false.

districts in which minority voters form an effective majority mirrors the minority voters' percentage of the relevant population"). As the Court explained, such an "inflexible rule would run counter to the textual command of § 2, that the presence or absence of a violation be assessed 'based on the totality of circumstances.'" *Id.* at 1018 (citing 42 U.S.C. § 1973(b)). Thus, proportionality is "*never* itself dispositive" of the totality of the circumstances test. *Id.* at 1025 (O'Connor, J., concurring) (emphasis in original); *see also LULAC*, 548 U.S. at 436 ("[Proportionality] does not . . . act as a 'safe harbor' for States in complying with § 2.").[8]

Furthermore, Defendant's undue focus on proportionality—and his repeated reliance on African-American electoral success in other corners of the state—fundamentally misunderstands Section 2 of the Voting Rights Act. The Supreme Court has made clear that "the right to an undiluted vote" under Section 2 "does not belong to the minority as a group," and thus "a State may not trade off the rights of some members of a racial group against the rights of other members of that group."

[8] Neither of the two out-of-circuit cases Defendant briefly cites discussing proportionality are any more persuasive. In *African American Voting Rights Legal Defense Fund, Inc. v. Villa*, the Eight Circuit reaffirmed the well-established principle that under the totality of the circumstances test, the "proportionality factor [is] one of several factors," stating "we admonish district courts to take care and include all circumstances that go into the 'totality' when these circumstances are placed in issue." 54 F.3d 1345, 1355–56 (8th Cir. 1995); *see also Fairley v. Hattiesburg, Miss.*, 662 F. App'x 291, 300–01 (5th Cir. 2016) (noting that district court considered proportionality as one factor in the totality of the circumstances).

*LULAC*, 548 U.S. at 437 (internal quotations and citations omitted); *Shaw v. Hunt*, 517 U.S. 899, 917 (1996) ("The vote-dilution injuries suffered [by some black voters] are not remedied by creating a safe majority-black district somewhere else in the State."). That African-American voters in Atlanta may have opportunities to elect their preferred candidates hardly justifies depriving African-American voters in central and southeastern Georgia of that same opportunity.

Proportionality is just one of the numerous enumerated and unenumerated factors in Section 2's totality of the circumstances test. Granting summary judgment on this basis would contradict controlling case law and would ignore every other factor in Section 2's totality of the circumstances test.

## V. Conclusion

For all of the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendant's Motion for Summary Judgment.

Dated: May 29, 2019

Respectfully submitted,

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**LOCAL RULE 7.1(D) CERTIFICATION OF COMPLIANCE**

I certify that this pleading has been prepared with Times New Roman 14 point, as approved by the Court in L.R. 5.1(C), N.D. Ga.

Respectfully submitted, this 29th day of May, 2019.

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 2019, I filed a copy of the foregoing Opposition to Defendant's Motion for Summary Judgment with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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| PAMELIA DWIGHT, an individual; BENJAMIN DOTSON, an individual; MARION WARREN, an individual; AMANDA HOLLOWELL, an individual; DESTINEE HATCHER, an individual; and WILBERT MAYNOR, an individual,<br><br>Plaintiffs,<br><br>v.<br><br>BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia,<br><br>Defendant. | Civil Action No. 1:18-cv-2869-RWS |

**PLAINTIFFS' RESPONSES TO DEFENDANT'S STATEMENT OF UNDISPUTED MATERIAL FACTS**

| Defendant's Statement | Plaintiffs' Response |
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| 1. Georgia is a diverse state, with 30.46% of its total population and 29.75% of its voting-age population identifying as black during the 2010 Census. Report of Gina Wright, Dkt. 65-3 ("Wright Rep.") at 5; Report of William Cooper ("Cooper Rep."), Dkt. 65-8 at 15 n.7. | **Disputed.** 31.53% of Georgia's total population identified as African American in the 2010 Census. Defendant's 30.46% figure refers to those who identified as *single race* African American. Wright Rep., at 5; Cooper Rep. at 15 & n.7. |
| 2. Georgia is a growing state, adding congressional districts after both the 2000 and 2010 Census. Wright Rep. at 3, 5. | **Undisputed.** |
| 3. In the 2002 and 2005 Georgia congressional plans, only two districts were majority African-American: Districts 4 and 5. Wright Rep. at 3, 5. | **Undisputed.** |
| 4. When the 2010 Census data was released, three districts on the 2005 congressional plan were majority African-American: Districts 4 and 13 were majority African-American on total population and voting-age population and District 5 was majority African-American on total population only. Wright Rep. at 5–6. | **Disputed.** Defendant's definition of "majority African-American" for purposes of a Section 2 claim is incorrect. To determine whether a district is majority-minority involves "an objective, numerical test: Do minorities make up more than 50 percent *of the voting-age population in the relevant geographic area*?" *Bartlett v. Strickland*, 556 U.S. 1, 18 (2009) (emphasis added). District 5 of the 2005 congressional plan did not satisfy that definition.<br><br>Plaintiffs do not dispute, however, that under 2010 Census data, Districts 4 and 13 of the 2005 congressional plan were majority-African-American by voting-age population. |

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| 5. When the 2010 Census data was released, District 2 of the 2005 congressional plan was underpopulated but almost majority African-American, with an AP Black total population of 49.32% and an AP BVAP of 46.84%. Wright Rep. at 6. | **Undisputed.** |
| 6. District 2 drew special attention in the 2011 drawing process because it was electing a candidate of choice of African-American voters, was significantly underpopulated, and needed new population. Deposition of Gina H. Wright ("Wright Dep."), Dkt. 64 at 92:10–20. | **Disputed.** The cited deposition testimony from Gina Wright does not state or even imply that District 2 drew special attention because it was electing a candidate of choice of African American voters. Rather, it states that CD 2 was underpopulated, and that there was a large area of population in a county that happened to have a large percentage of African Americans. Wright Dep. at 92:10–20. |
| 7. Reducing the African-American percentage of the population in District 2 in 2011 would have caused problems for preclearance. Wright Dep. at 93:9-94:11; Deposition of Laughlin McDonald ("McDonald Dep."), Dkt. 61 at 40:22–41:3, 41:12–16. | **Disputed.** Neither Ms. Wright nor Mr. McDonald testified that merely "reducing" the African-American percentage in District 2 would have caused preclearance problems. Mr. McDonald was asked whether "*dismantl*[*ing*] Congressman Bishop's district" (District 2) to the point that it was "unwinnable" would cause preclearance problems. McDonald Dep., at 40:22–41:15 (emphasis added). McDonald responded that dismantling that district would raise preclearance issues because it would result in excluding African Americans from the political process in that area. *Id.* Similarly, Ms. Wright suggested that preclearance would be an issue if the African-American population in District 2 was "*significantly* |

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| | lower[ed].” Wright Dep. at 93:3–8 (emphasis added). |
| 8. Plaintiffs’ expert Laughlin McDonald testified that significant changes to District 2 would hurt minority voting strength—and would be a basis for an objection by the Attorney General to any congressional plan. McDonald Dep. at 40:22–41:3, 41:12–16. | **Disputed.** This statement again mischaracterizes the question that Mr. McDonald was asked—and the answer that he gave—in the portion of his deposition cited by Defendant. Mr. McDonald did not testify that *any* significant change to District 2 would hurt minority voting strength. Rather, in response to the question whether “dismantl[ing]” District 2 such that it was “unwinnable” for the candidate of choice of African Americans would be a basis for an objection by the Attorney General, Mr. McDonald stated that such a change would be a basis for such a preclearance objection. McDonald Dep. at 40:22–41:16. |
| 9. The 2011 Georgia General Assembly adopted a new congressional district plan that included four majority-African-American districts (an increase of one from the 2005 plan and the equivalent of 28.57% of the fourteen seats allocated to the State): Districts 2, 4, 5, and 13. Wright Rep. at 6–7. | **Disputed.** For the same reason explained in Plaintiffs’ response to Defendant’s Statement 4, District 2 is not a “majority-African-American” district because its proportion of African Americans that are of voting age is under 50 percent. *Bartlett*, 556 U.S. at 18 (explaining that the test for whether a district is majority-minority is whether “minorities make up more than 50 percent of the voting-age population in the relevant geographic area”). Accordingly, the 2011 Georgia General Assembly adopted a new congressional district plan that included three majority-African-American districts (an increase of one from the 2005 plan and the equivalent of 21.43% of the fourteen seats allocated to the State). Ex. G-2 to |

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| | Cooper Rep., Dkt. 66-4 at Page 80 of 306. |
| 10. District 2 of the 2011 congressional plan was drawn to have a total black population of 52.28% and a black registered voter percentage of 50.11% (using 2010 data; 50.37% using 2018 data) by including Macon-Bibb County in the District. Wright Rep. at 7; Supplemental Report of Gina Wright ("Wright Supp. Rep."), Dkt. 65-9 at 1.[1] | **Disputed.** As explained in Mr. Cooper's second declaration, Ms. Wright's method for calculating the proportion of African-American registered voters in a given district is flawed. To calculate her registration information, Ms. Wright divided the number of African-American registered voters by the total number of active registered voters in the district. Second Declaration of William S. Cooper ("Cooper Supp. Rep."), Dkt. 66-6 ¶ 15. By doing so, Ms. Wright included all active registered voters of "unknown" race in the denominator, but none of those voters in the nominator. This method assumes that *none* of the registered voters of unknown race are African American. *Id.* The more accurate way to estimate African-American registered voters is to remove the "unknown" category from the calculation altogether. This method is likely to be more accurate because, instead of assuming that *all* of the nearly 10% of registered voters in Georgia who have an "unknown" race are not African American, it assumes "that voters whose race is unknown are distributed at the same ratio in a precinct as those whose race is known." *Id.* |

[1] Defendant's statement of undisputed material facts cites to Page 2 of Ms. Wright's supplemental report in support of this statement. Dkt. 65-2 ¶ 10. The information relevant to this assertion of fact is located at Page 1 of the supplemental report.

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| | Under this more accurate methodology, the percentage of individuals currently registered in CD 2 that are non-Hispanic African-American is 53.63%. Ex. G-5 to Cooper Rep, Dkt. 66-4 at Page 89 of 306.<br>Plaintiffs do not dispute that the proportion of District 2's total population using 2010 Census data was 52.28% African American. |
| 11. During the 2011 special legislative session, none of the alternative plans offered by then-Minority Leader Stacey Abrams and Senator Vincent Fort placed Macon-Bibb County into District 12 but instead maintained similar minority percentages in proposed versions of District 2. Wright Rep. at 8. | **Disputed.** This statement is neither material nor relevant to any issue before the Court. |
| 12. The 2011 plan was submitted to the Department of Justice for preclearance under Section 5 of the Voting Rights Act and was approved in December 2011. Wright Rep. at 6. | **Disputed.** This statement is neither material nor relevant to any issue before the court. |
| 13. On the 2011 congressional plan, District 12 was significantly adjusted to account for the addition of a new congressional district in the state. Wright Rep. at 6. | **Disputed.** Plaintiffs dispute that District 12 was significantly adjusted to account for the addition of a new congressional district in the state. Based on the 2010 Census, District 12 was overpopulated by only 554. Ex. F-2 to Cooper Rep, Dkt. 66-4 at Page 75 of 306. Yet the 2011 Plan shifted six majority-African-American counties out of District 12, and moved seven majority-white counties into District 12. Cooper Rep. ¶¶ 60–61, fig. 13. Only 27.89% of the population moved |

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| | into CD 12 was African American. *Id.* ¶ 62. |
| 14. Incumbent member of Congress John Barrow won reelection in District 12 in the 2012 election, but lost in the 2014 general election to Rick Allen, who was reelected in 2016 and 2018. Report of Maxwell Palmer ("Palmer Rep."), Dkt. 65-10 at 7; 2012, 2014, 2016, and 2018 Georgia Election Results.[2] | **Undisputed.** |
| 15. In other districts on the 2011 plan, African-American incumbent members of Congress John Lewis (District 5), Hank Johnson (District 4), Sanford Bishop (District 2), and David Scott (District 13) were reelected from their respective districts in 2012, 2014, 2016, and 2018. Wright Rep. at 8. | **Undisputed.** |
| 16. In 2018, African-American member of Congress Lucy McBath won election in District 6. Wright Rep. at 8. | **Disputed.** This statement is neither material nor relevant to any issue before the court. District 6 is in the Atlanta metropolitan statistical area, which is not in central-southeast Georgia, and is not a majority-minority district under any calculation. Exs. G-1 & G-2 to Cooper Rep., Dkt. 66-2 at Pages 79–80 of 306. |
| 17. Congressmen John Lewis (District 5), Hank Johnson (District 4), Sanford Bishop (District 2), David Scott | **Undisputed.** |

[2] These results are available online at: http://results.enr.clarityelections.com/GA/42277/113204/en/summary.html (2012); http://results.enr.clarityelections.com/GA/54042/149045/en/summary.html (2014); http://results.enr.clarityelections.com/GA/63991/184321/en/summary.html (2016); and https://results.enr.clarityelections.com/GA/91639/Web02-state.221451/#/ (2018).

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| (District 13), and Lucy McBath (District 6) were candidates of choice of the minority community. Deposition of John Alford ("Alford Dep."), Dkt. 63 at 87:2–10; Deposition of Maxwell Palmer ("Palmer Dep."), Dkt. 62 at 93:2–13. | |
| 18. District 2 has consistently elected a candidate of choice: Sanford Bishop. Wright Rep. at 8; Alford Dep. at 87:2-10; Palmer Dep. at 93:2–13; *supra* at ¶ 14. | **Undisputed.** |
| 19. Every Plaintiff except one has been registered to vote for the entire decade in which the 2011 congressional plan has been in use, and in most cases, much longer. Am. Compl., Dkt. 14 ¶¶ 11–15. | **Undisputed.** |
| 20. Plaintiff Amanda Hollowell has been registered in the state of Georgia since she moved to Savannah in 2012. Deposition of Amanda Hollowell ("Hollowell Dep."), Dkt. 58 at 12:21–25. | **Undisputed.** |
| 21. Since registering in Georgia, Ms. Hollowell has voted in every election, including primaries, and has been registered to vote for each and every election cycle since the 2011 congressional plan was first implemented. Hollowell Dep. at 13:11–17, 12:21–25. | **Undisputed.** |
| 22. The only Plaintiff not registered to vote in every election in which the 2011 plan was used is Plaintiff Destinee Hatcher—because she did not turn eighteen years old until 2014, when she promptly registered. | **Undisputed.** |

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| Deposition of Destinee Hatcher ("Hatcher Dep."), Dkt. 59 at 10:15–11:2. | |
| 23. Six of the seven plaintiffs in this case were eligible to vote in 2012, 2014, 2016, and 2018 and Ms. Hatcher was eligible in every election except 2012. Am. Compl. ¶¶ 11–15. | **Undisputed.** |
| 24. Plaintiffs' expert selected a 71-county area in southeast Georgia because he was looking for an area with a "big minority population that has heretofore not had an opportunity to elect a candidate of choice." Deposition of William Cooper ("Cooper Dep."), Dkt. 60 at 70:12–16, 78:25–79:13. | **Disputed.** This statement mischaracterizes Mr. Cooper's testimony. Mr. Cooper did not choose the 71-county area because he was "looking" for any particular population. Rather, Mr. Cooper focused on that region of Georgia, which is where Plaintiffs generally reside, to determine whether a reasonably compact majority-minority district could be drawn in central and southeast Georgia. Cooper Rep. ¶ 5. Mr. Cooper isolated the 71-county area, in adherence to traditional redistricting principles and communities of interest, to keep the illustrative majority-minority districts within central and southeast Georgia, and outside of the Atlanta and Athens metropolitan statistical areas. *Id.* ¶¶ 6–7.<br><br>In the portion of Mr. Cooper's deposition cited by Defendant, Mr. Cooper was discussing his initial declaration's assertion that the 71-county area encompassed a sufficiently large population to provide adequate flexibility in drawing a compact majority-minority district. Cooper Dep. at 78:25–79:13. |

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| 25. Mr. Cooper created Illustrative Plans that focused on drawing a majority-African-American district. Cooper Dep. at 70:12–16, 78:25–79:13. | **Disputed.** This statement mischaracterizes Mr. Cooper's testimony. Mr. Cooper did not state in any of the cited portions of his testimony that he "created illustrative plans that focused on drawing a majority-African-American district." To the contrary, Mr. Cooper testified: "this is a Section 2 case. So you have to be cognizant of race along the way . . . [b]ut I always was applying traditional redistricting principles." Cooper Dep. at 100:1–5. |
| 26. Mr. Cooper's Illustrative Plans raised the black total population in District 12 to 53.85% (Plan 1) and 53.78% (Plan 2). Cooper Rep. at 29, 32. | **Undisputed.** |
| 27. Both Illustrative Plans failed to include a majority of black registered voters in District 12: using 2018 voter registration data, the black voter registration percentages in District 12 on the Illustrative Plans are only 49.98% (Plan 1) and 49.92% (Plan 2). Wright Supp. Rep. at 1.[3] | **Disputed.** For the reasons explained in response to Defendant's Statement 10, Ms. Wright uses a flawed methodology for calculating registration rates that underestimates the amount of registered African Americans in a given district. Cooper Supp. Rep. ¶ 15.<br><br>Under Mr. Cooper's more accurate methodology, the percentage of individuals registered in District 12 that are non-Hispanic African-American are 55.35% in Illustrative Plan 1, Ex. H-5 to Cooper Rep., Dkt. 66-4 at Page 100 of 306; 55.27% in Illustrative Plan 2, Ex. I-5 to Cooper Rep., Dkt. 66-4 at Page 112 of 306; and 55.25% in |

[3] Defendant's statement of undisputed material facts cites to Page 2 of Ms. Wright's supplemental report in support of this statement. Dkt. 65-2 ¶ 27. The information relevant to this assertion of fact is located at Page 1 of the supplemental report.

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| | Illustrative Plan 3, Ex. B-5 to Cooper Supp. Rep., Dkt. 66-6 at Page 32 of 40. |
| 28. The Illustrative Plans decreased the black total population in District 2 from 52.28% (2011 Plan) to 49.72% (Plan 1) and 49.81% (Plan 2). Wright Rep. at 11. | **Undisputed.** |
| 29. Each of the Illustrative Plans also brought District 2's 2018 black voter registration percentage below a majority: from 50.37% (2011 Plan) to 47.71% (Plan 1) and 47.82% (Plan 2). Wright Supp. Rep. at 1.[4] | **Disputed.** For the reasons explained in response to Defendant's Statement 10, Ms. Wright uses a flawed methodology for calculating registration rates that underestimates the amount of registered African Americans in a given district. Cooper Supp. Rep. ¶ 15.<br><br>Under Mr. Cooper's more accurate methodology, the percentage of registered voters in District 2 that are African American is 50.93% in Illustrative Plan 1, Ex. H-5 to Cooper Rep.; 51.10% in Illustrative Plan 2, Ex. I-5 to Cooper Rep.; and 50.85% in Illustrative Plan 3, Ex. B-5 to Cooper Supp. Rep. |
| 30. The key point to creating a majority-African-American district is whether District 2 or District 12 gets Macon-Bibb County. Wright Dep. at 135:7–11; Cooper Dep. at 75:17–76:18. | **Disputed.** As Mr. Cooper stated in his deposition, it may be possible to draw a majority-minority District 12 that does not include Macon-Bibb County. Cooper Dep. at 75:17–76:18. His illustrative plans place Macon-Bibb County in District 12 to "compl[y] with traditional redistricting principles" by avoiding larger disruptions of the existing districts. *Id.* For example, District 12 could have avoided Macon- |

[4] Defendant's statement of undisputed material facts cites to Page 2 of Ms. Wright's supplemental report in support of this statement. Dkt. 65-2 ¶ 29. The information relevant to this assertion of fact is located at Page 1 of the supplemental report.

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| | Bibb County but "have had a greater impact on Congressional District 2 or [reached] the Metro Atlanta area." *Id.* |
| 31. Ms. Wright testified that it was not possible to make District 12 a majority-African-American district without including Macon-Bibb County. Wright Rep. at 10; Wright Dep. at 135:7–11. | **Disputed**. As explained in response to Defendant's Statement 30, Mr. Cooper testified that it may be possible to make District 12 a majority-African-American district without including Macon-Bibb County. Cooper Dep. at 75:17–76:18. |
| 32. Mr. Cooper was not sure, but did not disagree that a map drawer would have to violate traditional redistricting principles to make District 12 a majority-African-American district without Macon-Bibb County. Cooper Dep. at 75:17–76:18. | **Disputed.** This statement mischaracterizes Mr. Cooper's testimony. He testified that he *did not know* whether District 12 had to include portions of Macon-Bibb County to become a majority-minority district. His illustrative plans include portions of Macon-Bibb County because when he completed those two plans, he "felt like [he] had drawn a plan and a district that complied with traditional redistricting principles." Mr. Cooper did not explore other options that might not have included portions of Macon-Bibb County in District 12. Cooper Dep. at 75:17–76:18. |
| 33. Mr. Cooper did not know of any way to make both District 12 and District 2 majority African-American because Macon-Bibb County was necessary. Cooper Dep. at 75:17–76:18. | **Disputed.** The portion of Mr. Cooper's deposition that Defendant cites offers absolutely no support for this statement. Mr. Cooper was asked whether it was necessary to include a portion of Macon-Bibb County in District 12 to reach majority-minority status. Mr. Cooper answered by saying that he did not know. He was not asked about District 2, let alone whether Macon-Bibb County had to be included in District 2 for that district to be |

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| | considered majority-African-American—a status it does not currently have under the 2011 Plan. Cooper Dep. at 75:17–76:18. |
| 34. It is not possible to create a majority-minority District 12 without Macon-Bibb County while complying with traditional redistricting principles. Cooper Dep. at 76:8–18. | **Disputed.** Again, this statement mischaracterizes Mr. Cooper's testimony. Mr. Cooper was asked whether "the Bibb County population was required to make the 12th a majority-minority district." He responded that he did not "know definitively," but he agreed that his Illustrative Plans included a portion of Macon-Bibb County in District 12 and also complied with traditional redistricting principles. Cooper Dep. at 76:8–18. When drawing the illustrative plans, Mr. Cooper did not endeavor to determine whether it was possible to make District 12 a majority-minority district without including Macon-Bibb County but also adhering to traditional redistricting principles. Cooper Dep. at 75:17-76:3. |
| 35. Each of Mr. Cooper's Illustrative Plans move more than one million Georgians into different congressional districts and split more counties than the current congressional plan. Wright Rep. at 13, 19. | **Disputed.** Mr. Cooper's Illustrative Plans 1 and 3 split just one more county than the 2011 Plan, and his Illustrative Plan splits just two more counties than the 2011 Plan. Cooper Rep. ¶ 63; Cooper Supp. Rep. ¶ 38. |
| 36. Mr. Cooper's Illustrative Plans are less compact than the current congressional plan. Wright Rep. at 18, 19. | **Disputed.** While the mean Reock and Polsby-Pepper scores of Mr. Cooper's illustrative plans are slightly lower than the current congressional plan, that difference is so small that it is insignificant. Cooper Supp. Rep. at 11 ¶ 30 (explaining that illustrative plans' |

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| | compactness "are within the norm of compactness scores in the 2011 Plan"). |
| 37. The Illustrative Plans make use of "fingers" reaching through counties to take out specific population—always in overwhelmingly African-American areas. Wright Rep. at 14, 20. | **Disputed.** Mr. Cooper testified that in splitting counties, he followed traditional redistricting principles, including historical boundaries and communities of interest, Cooper Dep. at 104:22–106:12, adjusting for population differences, and he also concluded that some splits were a more obvious way to divide districts. Cooper Dep. at 103:10–104:21. |
| 38. Each of Mr. Cooper's proposed Illustrative Plans also resulted in both Districts 2 and 12 having a Black voter registration percentage of less than 50%. Wright Supp. Rep. at 1.[5] | **Disputed.** For the reasons explained in response to Defendant's Statement 10, Ms. Wright uses a flawed methodology for calculating registration rates that underestimates the amount of registered African Americans in a given district.<br><br>Under the more accurate methodology used by Mr. Cooper, the percentage of registered voters in District 2 that are African American is 50.93% in Illustrative Plan 1, Ex. H-5 to Cooper Rep.; 51.10% in Illustrative Plan 2, Ex. I-5 to Cooper Rep.; and 50.85% in Illustrative Plan 3, Ex. B-5 to Cooper Supp. Rep. The percentage of registered voters in District 12 that are African American is 55.35% in Illustrative Plan 1, Ex. H-5 to Cooper Rep.; 55.27% in Illustrative Plan 2, Ex. I-5 to Cooper Rep.; and 55.25% in |

[5] Defendant's statement of undisputed material facts cites to Page 2 of Ms. Wright's supplemental report in support of this statement. Dkt. 65-2 ¶ 38. The information relevant to this assertion of fact is located at Page 1 of the supplemental report.

| | |
|---|---|
| | Illustrative Plan 3, Ex. B-5 to Cooper Supp. Rep. |
| 39. The State is beginning a transition process to a new voting system. 2019 Georgia Laws Act No. 24 (H.B. 316) (creating structure for new voting equipment). | **Disputed.** This statement is neither material nor relevant to any issue before the Court. |
| 40. The Census estimates that almost one million additional individuals have moved into Georgia since 2010. Cooper Rep. at 36. | **Disputed.** The Census estimates that, between 2010 and 2017, 741,726 additional individuals moved into Georgia. *See* Cooper Rep. at 12 (Figure 4). |
| 41. The Illustrative Plans combine minority communities in Macon, Augusta, and Savannah to create a District 12 that is barely majority African-American using nine-year-old Census data and is below 50% using 2018 voter registration data. Cooper Rep. at 29, 32; Wright Supp. Rep. at 2.[6] | **Disputed.** For the reasons explained in response to Defendant's Statement 10, Ms. Wright uses a flawed methodology for calculating registration rates that underestimates the amount of registered African Americans in a given district.<br><br>Under the more accurate methodology used by Mr. Cooper, the percentage of registered voters in District 12 that are African American is 55.35% in Illustrative Plan 1, Ex. H-5 to Cooper Rep.; 55.27% in Illustrative Plan 2, Ex. I-5 to Cooper Rep.; and 55.25% in Illustrative Plan 3, Ex. B-5 to Cooper Supp. Rep.<br><br>Furthermore, Cooper did not simply combine communities in Macon, Augusta, and Savannah. Rather he reunited African American counties in central and southeast Georgia that had |

[6] Defendant's statement of undisputed material facts cites to Page 2 of Ms. Wright's supplemental report in support of this statement. Dkt. 65-2 ¶ 41. The information relevant to this assertion of fact is located at Page 1 of the supplemental report.

| | |
|---|---|
| | previously been removed from District 12, including a number of rural counties with significant African-American populations. Cooper Dep. at 166:8–167:7. |
| 42. Mr. Cooper could identify practically nothing beyond the race of the voters in Macon, Augusta, and Savannah that united them. Cooper Dep. at 105:24–106:12 (identifying a highway as a possible connection). | **Disputed.** Mr. Cooper's discussion of the highways connecting Macon, Augusta, and Savannah is highly relevant to the issue of communities of interest given the large size of Georgia's congressional districts. Ms. Wright recognized this fact—she explained that the large size of congressional districts makes it difficult to identify interests that unite all areas joined by a single district. *See* Wright Dep. at 65:8–13 ("Congressional districts are very large, especially when you move away from the densely populated areas. They span a large area. So it's much more difficult to define what a community of interest is when you're looking at a district that span multiple counties."); *id.* at 67:12–15 ("[A]s I said, the districts are so large, communities of interest is not a conversation that's normally held about a congressional district."). In addition to the transportation linkages, the communities in Mr. Cooper's illustrative District 12 are in the same region where District 12 is currently located, and reunites counties that were previously located in District 12. Cooper Dep. at 165:25-167:7; Wright Dep. at 244:13-14. |
| 43. The 2010 Census for Georgia shows the AP Black total population is | **Disputed.** The 2010 Census found that statewide, the AP Black total |

| | |
|---|---|
| 30.46% and the AP Black VAP is 29.75%. Wright Rep. at 5; Cooper Rep. at 15 n.7. | population in Georgia was 31.53%. Wright Rep. at 5; Cooper Rep. ¶ 26. The 30.46% figure cited by Defendant in this statement is the statewide single-race black population. |
| 44. Four of the fourteen congressional districts are currently majority-black on total population and voter registration: Districts 2, 4, 5, and 13. Wright Rep. at 7. | **Undisputed.** |

Dated: May 29, 2019

Respectfully submitted,

By: *<u>/s/ Uzoma N. Nkwonta</u>*
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*Attorneys for Plaintiffs*
*Admitted pro hac vice

**CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 2019, I filed a copy of the foregoing Motion for Partial Summary Judgment with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

*/s/ Uzoma N. Nkwonta*
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | |
|---|---|
| PAMELIA DWIGHT, an individual; BENJAMIN DOTSON, an individual; MARION WARREN, an individual; AMANDA HOLLOWELL, an individual; DESTINEE HATCHER, an individual; and WILBERT MAYNOR, an individual,<br><br>Plaintiffs,<br><br>v.<br><br>BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia,<br><br>Defendant. | Civil Action No. 1:18-cv-2869-RWS |

**PLAINTIFFS' SECOND STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Plaintiffs PAMELIA DWIGHT, BENJAMIN DOTSON, MARION WARREN, AMANDA HOLLOWELL, DESTINEE HATCHER, and WILBERT MAYNOR, by and through undersigned counsel and pursuant to Rule 56.1(B)(1) and 56.1(B)(2)(b) of the Local Rules for the United States District Court, Northern

District of Georgia, file this Statement of Undisputed Material Facts in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment.[1]

## I. Districting and Election History in Georgia

1. Despite having an African-American voting-age population of less than 50% since 1995, Georgia's Congressional District ("CD") 2 has consistently elected Sanford Bishop, the African-American candidate of choice. Second Declaration of William S. Cooper, Dkt. 66-6 at ¶ 8 (hereinafter "Second Cooper Report"); Deposition of Gina H. Wright at 160:8–161:19 (hereinafter "Wright Dep."), Second Khanna Decl. Ex. 5.

2. The African-American population in CD 2 would be able to elect their candidate of choice even if the black registered voter population was lower than what it currently is in the 2011 plan. Wright Dep. at 164:15–21.

3. Defendant's expert, Gina Wright, who also drew the 2011 plan currently in place, did not increase the voting age or registered African American population in CD 2 because of any perceived legal requirement. Wright Dep. at 92:4-20.

[1] All record citations refer either to filings on the Court's CM/ECF system or to exhibits attached to the Declaration of Abha Khanna in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment (May 29, 2019) (hereinafter "Second Khanna Decl."), which accompanies this filing.

4. Between the 2000 Census and 2010 Census, Georgia's overall minority population increased significantly. Declaration of William S. Cooper Report, Dkt. 66-4 at ¶¶ 26, 28 (hereinafter "Cooper Report"). In 2000, minorities accounted for 37.35% of the population in Georgia. By 2010, minorities comprised 44.12% of the population. By contrast, the non-Hispanic White population percentage declined from 62.65% in 2000 to 55.88% in 2010. *Id.* at ¶ 28.

5. Georgia's population growth since 2000 can be attributed almost entirely to gains in the overall minority population. Cooper Report ¶ 30. Between 2000 and 2010, 81.0% of the population gain is attributed to minority population growth, with 44.01% of the overall gain attributed to Black population growth. *Id.* at ¶ 31.

6. In 2012, John Barrow, the candidate of choice of African Americans in CD 12, won reelection. Report of Maxwell Palmer, Dkt. 66-8 at 7 (hereinafter "Palmer Report").

7. In 2014, Rick Allen, the candidate of choice of white voters in CD 12, defeated John Barrow, the candidate of choice of African-American voters. Palmer Report at 7.

## II. The Illustrative Plans

8. Plaintiffs' illustrative plans result in the following African-American voting-age population percentages:

| District | 2005 Plan | Plaintiffs' Plan 1 | Plaintiffs' Plan 2 | Plaintiffs' Plan 3 |
|---|---|---|---|---|
| CD 2 | 46.84% | 46.92% | 47.03% | 46.89% |
| CD 12 | 41.50% | 50.32% | 50.25% | 50.20% |

Cooper Report, fig. 10, Exs. H-2, I-2; Second Cooper Report, Ex. B-2.

9. In calculating the proportion of registered voters that are African American in the relevant districts, Ms. Wright assumed that none of the voters whose race is listed as "unknown" are African American. Second Cooper Report ¶ 15. *See* Deposition of William Cooper at 143:1–145:1, Second Khanna Decl. Ex. 6.

10. Plaintiffs' illustrative CD 12s are "in the same east central Georgia [location] that the current [CD] 12 is." Wright Dep. 49:16–51:6; 244:8–14.

11. Ms. Wright testified that "on a congressional map, the communities of interest is not as high of a priority . . . because they are so large in size." Wright Dep. at 65:22–66:4.

12. Ms. Wright testified that communities of interest is not normally "a conversation that's being held about a congressional map." Wright Dep. 66:20-22.

## IV. Plaintiffs' Experiences

13. Plaintiff Destinee Hatcher attended college at South Carolina State University starting in 2013, and she moved back to Georgia in June 2017. Deposition of Destinee Hatcher ("Hatcher Dep.") at 13:9–15:1, Second Khanna Decl. Ex. 3; Declaration of Destinee Hatcher, Second Khanna Decl. Ex. 4.

14. Ms. Hatcher decided to pursue this lawsuit "[w]hen [she] moved home back home and saw that [her] community was basically being neglected. . . . just a lot of neglect for people that looked like [her] as African-Americans." Hatcher Dep. at 14:21–15:1, 37:15–20.

15. Plaintiffs Pamelia Dwight and Wilbert Maynor lived in CD 12 during the 2012 election. Deposition of Pamelia Dwight at 6:13-20, Second Khanna Decl. Ex. 2; Amended Complaint, Dkt. 14 at ¶ 14.

16. Plaintiff Marion Warren testified that he would vote for a different party if it had a platform that was responsive to African-American needs. Deposition of Marion Warren at 63:11-64:2, Second Khanna Decl. Ex. 1.

Dated: May 29, 2019

By: /s/ *Uzoma N. Nkwonta*

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*Attorneys for Plaintiffs*
*Admitted pro hac vice

**CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 2019, I filed a copy of the foregoing Opposition to Defendant's Motion for Summary Judgment with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

*/s/ Uzoma N. Nkwonta*
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | |
|---|---|
| PAMELIA DWIGHT, an individual; BENJAMIN DOTSON, an individual; MARION WARREN, an individual; AMANDA HOLLOWELL, an individual; DESTINEE HATCHER, an individual; and WILBERT MAYNOR, an individual,<br><br>Plaintiffs,<br><br>v.<br><br>BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia,<br><br>Defendant. | Civil Action No. 1:18-cv-2869-RWS |

**DECLARATION OF ABHA KHANNA IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I, Abha Khanna, hereby declare:

I am a partner with the law firm of Perkins Coie LLP and one of the attorneys for Plaintiffs in the above-captioned matter. I am over the age of 18 and am competent to testify.

1. Attached hereto as Exhibit 1 is a true and correct copy of an excerpt from the Deposition of Marion Warren, dated March 29, 2019.

2. Attached hereto as Exhibit 2 is a true and correct copy of an excerpt from the Deposition of Pamelia Dwight, dated March 29, 2019.

3. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from the Deposition of Destinee Hatcher, dated March 26, 2019.

4. Attached hereto as Exhibit 4 is a true and correct copy of the Declaration of Destinee Hatcher, dated May 29, 2019.

5. Attached hereto as Exhibit 5 is a true and correct copy of excerpts from the Deposition of Gina H. Wright, dated March 19, 2019.

6. Attached hereto as Exhibit 6 is a true and correct copy of an excerpt from the Deposition of William Cooper, dated March 27, 2019.

EXECUTED at Seattle, Washington this 29th day of May 2019.

*s/ Abha Khanna*
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*Admitted pro hac vice

**CERTIFICATE OF SERVICE**

I hereby certify that on May 29, 2019, I filed a copy of the foregoing Declaration of Abha Khanna in Support of Plaintiffs' Opposition to Defendant's Motion for Summary Judgment with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

*/s/ Uzoma N. Nkwonta*
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# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | |
|---|---|
| PAMELIA DWIGHT, an individual; BENJAMIN DOTSON, an individual; HUDMAN EVANS, SR., an individual; MARION WARREN, an individual; AMANDA HOLLOWELL, an individual; DESTINEE HATCHER, an individual; and WILBERT MAYNOR, an individual, | CIVIL ACTION |
| Plaintiffs, | FILE NO. |
| vs. | 1:18-cv-2869-RWS |
| BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, | |
| Defendant. | |

# DEPOSITION OF

# MARION WARREN

Friday, March 29, 2019

1:00 p.m.

One Atlantic Center, Suite 3250
1201 West Peachtree Street
Atlanta, Georgia

Linda C. Ruggeri, CCR-A-261

JPA REPORTING, LLC
CERTIFIED COURT REPORTERS
404-853-1811 1-888-947-2963

So, anyway, for some reason, the Republicans are able to not do anything for the black race at all. And I think that's a written issue. They do it -- you know, they just purposely do it, okay. They cut out beneficial things that my race of people need.

To me, the Republican Party is absolutely without a doubt either callous or just plain and simply racist. It's one or the other because they do nothing, absolutely nothing, for the black race of America.

Q. Let's say there were another party -- I'll just make up a party -- a blue party that came along and had a platform that was responsive to African American needs especially on issues of race. Do you believe that you would consider supporting that party or other African Americans in your community?

A. Sure.

MR. TYSON: I object. It calls for speculation. You can answer.

THE WITNESS: Sure. Because if you're basing this testimony on me, absolutely, because I'm looking for -- I'm looking for a leg up. I'm looking for upward mobility. I'm looking for this. Now, if the blue party comes and tells me, Marion, I'm going to do this so that -- I'm going

to do this so you can do this and that's a party, I'm going.

Now, once I find -- my problem with the Republican Party is because they absolutely lie, you know. And they do things to entice me, but there's never a follow-through. They never finish. It never happens. And that's based on my race. That's what I see as my race.

Now, I don't see -- I don't see the absolute disparity between the Democratic Party and the black race even though they don't do very much more for us than the Republican Party. But they don't take away -- if you got me, I don't have any method of getting a job. I can't find a job. But you're going to take food stamps away from me. You're going to take my means of survival away from me, okay, and then tell me go out and find a job. So I have -- that's the thing I have with the Republican Party.

Now, but they'll get up and say, well -- like my boy Trump said, Trump said -- told the black community I'm going to give y'all jobs, okay. But it never came through.

MR. NKWONTA: Thank you. That's all the questions I have for this moment.

# EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | |
|---|---|
| PAMELIA DWIGHT, an individual; BENJAMIN DOTSON, an individual; HUDMAN EVANS, SR., an individual; MARION WARREN, an individual; AMANDA HOLLOWELL, an individual; DESTINEE HATCHER, an individual; and WILBERT MAYNOR, an individual, | CIVIL ACTION |
| Plaintiffs, | FILE NO. |
| vs. | 1:18-cv-2869-RWS |
| BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, | |
| Defendant. | |

# DEPOSITION OF

# PAMELIA DWIGHT

Friday, March 29, 2019

10:05 a.m.

One Atlantic Center, Suite 3250
1201 West Peachtree Street
Atlanta, Georgia

Linda C. Ruggeri, CCR-A-261

JPA REPORTING, LLC
CERTIFIED COURT REPORTERS
404-853-1811 1-888-947-2963

thing already.

If you need a break, let me know. I don't think we'll be here that long. But my only request is if we take a break that you answer the question I asked before we take the break. So what I'll do is begin with just some background information about you and kind of your experiences, and then we'll move into the specifics on the allegations in this particular case.

So we'll begin if you can give me your full name for the record, please.

A. Pamelia Dwight.

Q. And what is your address, Ms. Dwight?

A. 244 North Avenue, Millen, Georgia, Jenkins County.

Q. I have been to Jenkins County. How long have you lived in Jenkins County?

A. I'm a lifelong resident, but I took off after I graduated college some time to work and I've been back since the late '90s.

Q. I have a couple other questions that are just background.

Are you on any medication or have a medical condition that would keep you from fully and truthfully participating today?

# EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | |
|---|---|
| PAMELA DWIGHT, an individual; BENJAMIN DOTSON, an individual; HUDMAN EVANS, SR., an individual; MARION WARREN an individual; AMANDA HOLLOWELL, an individual; DESTINEE HATCHER, an individual; and WILBERT MAYNOR, an individual, | CIVIL ACTION FILE NO. 1:18-CV-2869-RWS |
| Plaintiffs, | |
| v. | |
| BRAD RAFFENSPERGER, in his capacity as Secretary of State of the State of Georgia, | |
| Defendants. | |

---

# DEPOSITION OF DESTINEE HATCHER

March 26, 2019
11:00 a.m.
1201 West Peachtree Street, NW
One Atlantic Center - Suite 3250
Atlanta, Georgia
Allison H. Wilcox, RPR, CCR-2569

A. Columbia, South Carolina.

Q. And were you working at Amazon in Columbia while you were attending South Carolina State?

A. Yes.

Q. Do you remember approximately when you would have started there or are you currently working for Amazon still?

A. No.

Q. Do you remember when you finished working for Amazon?

A. Last year sometime.

Q. And did you voluntarily choose to leave?

A. Yes.

Q. And what were your responsibilities while you were working at Amazon?

A. Picking the items.

Q. One of the warehouse kind of operations?

A. Yeah.

Q. I've seen -- are they using like the robots to do that kind of thing, going and grabbing things or --

A. No.

Q. Okay. I've seen that in something they were demonstrating something somewhere. I can't remember.

So what did you do then when you left Amazon? So I'm assuming you resigned and went to a different job?

A. No; I was just a full-time student.

Q. So for the past year approximately you have been just a full-time student at South Carolina State?

A. Yes.

Q. Do you remember approximately how many hours a week you were working when you were working at Amazon?

A. Forty.

Q. Okay. Full-time job. All right.

So let's talk a little bit about this particular case. What was it that made you decide to become a plaintiff in this lawsuit and sue the Secretary of State?

A. Because I saw us as African-Americans aren't able to elect someone that really cares about our community.

Q. And what was it that led you to kind of see that there wasn't an ability of African-Americans to elect somebody who cared for the needs of your community?

A. When I moved back home and I saw that my

community was basically being neglected.

Q. And what are some of the ways that your community was being neglected that were concerning to you?

A. The lack of healthcare, and it's not enough funding for the youth centers at the rec department.

Q. Uh-huh. Were you able to use the -- or did you utilize any youth centers while you were in high school there or in that kind of youth age bracket?

A. It was very limited.

Q. And so those are the rec centers. Are those operated by the county in Jefferson County or by some other entity or do you know?

A. I don't know.

Q. So when did you first hear about this lawsuit specifically?

A. The last year.

Q. And do you remember who you heard about it from?

A. Yes; my mother.

Q. Okay. And what's your mother's name?

A. Yvette Hatcher.

Q. Do you know how she heard about the

EXAMINATION

BY MR. NKWONTA:

Q. Ms. Hatcher, Mr. Tyson asked you earlier about whether you had ever supported republican candidates. Do you recall that?

A. Yes.

Q. Do you identify as a democrat?

A. No.

Q. Have you voted for democratic candidates in the past?

A. Yes.

Q. Why is that?

A. Because they were the party they reached out to my community, African-Americans.

Q. Can you explain why you agreed to be a plaintiff in this lawsuit?

A. Yes. Because I moved back home and I saw that my community wasn't growing and just a lot of neglect for people that looked like me as African-Americans.

MR. NKWONTA: Nothing further.

MR. TYSON: I just have a couple quick questions in light of that.

MR. NKWONTA: Sure.

///

# EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA ATLANTA DIVISION**

| | |
|---|---|
| PAMELIA DWIGHT, an individual; BENJAMIN DOTSON, an individual; MARION WARREN, an individual; AMANDA HOLLOWELL, an individual; DESTINEE HATCHER, an individual; and WILBERT MAYNOR, an individual,<br><br>Plaintiffs,<br>v.<br><br>BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia,<br><br>Defendant. | Civil Action No. 1:18-cv-2869-RWS |

**DECLARATION OF DESTINEE HATCHER**

I, Destinee Hatcher, according to 28 U.S.C. § 1746, hereby state:

1. My name is Destinee Hatcher. I am over the age of 18, I am competent to testify, and I declare the following facts based on my own personal knowledge.

2. In the Fall of 2013, I moved from Georgia to South Carolina to attend South Carolina State University.

3. I did not move back to Georgia until June 2017.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on May 29, 2019.

Destinee Hatcher

# EXHIBIT 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

| | |
|---|---|
| PAMELIA DWIGHT, an individual; BENJAMIN DOTSON, an individual; HUDMAN EVANS, SR., an individual; MARION WARREN, an individual; AMANDA HOLLOWELL, an individual; DESTINEE HATCHER, an individual; and WILBERT MAYNOR, an individual, Plaintiffs, | ) |
| vs. | ) CIVIL ACTION NO. ) 1:18-CV-2869-RWS |
| BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, Defendant. | ) |

VIDEOTAPED DEPOSITION OF GINA H. WRIGHT
(Taken by Plaintiffs)
March 19, 2019 at 8:38 a.m.
18 Capitol Square, Suite 410
Atlanta, Georgia

Reported by: Debra M. Druzisky, CCR-B-1848

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

draw a draft, then I would work on that, you know, exclusively.

If we're going through a process where a lot of people have input, then those people would work on whatever district or region they're talking about. And sometimes they might draw an entire map and we might look at them all together and decide, you know, piecing things together.

It just depends on what -- which type of statewide map we're talking about, what the instructions were as far as drawing that statewide map, and how best method to go about the process is.

And really all of that comes from, you know, who's asking for it.

Q. Using the 2011 congressional districting map as an example --

A. Uh-huh.

Q. -- were -- how many people were involved -- or were others involved in drawing that plan aside from yourself?

A. I don't recall there being other

involvement of other staff in the final drawing of that map.

Q. So you drew that map entirely by yourself?

A. I didn't say that. I said I don't recall other staff being involved in the drawing of that map.

Q. So you don't remember whether you drew it by yourself or whether other staff were involved?

A. Well, that depends on how you define "by yourself." So as far -- can you be more specific in what you're asking?

Q. So "by yourself" means alone. I'm not sure how else to define --

A. So I --

Q. -- "by yourself?"

A. I work for the General Assembly, and I work for all the members of the General Assembly. So in drawing a map, although I may be the person who alone does the technical work on the technical end of it, that doesn't mean I alone drew the map. There was input from other people involved in the

drawing of the map.

Q. I'm asking about the technical aspects --

A. Okay.

Q. -- of drawing the map.

A. So the technical end, then yes, that would be me.

Q. That would be you?

Was anyone else involved in the technical aspects of drawing the map?

A. Other staff may have been involved in early versions of -- and versions for different members. I can't tell you that specifically because I don't recall.

But in that -- in the version that I know of and that was adopted in the final version, I don't recall any other staff having any work on that.

Q. Other than the pre-existing map, what materials did you start with?

A. The -- I believe that would be a case where I didn't start with a pre-existing map, I started with a blank map. So we have all of --

community of interest is. And that can vary no matter what -- or you know, depending where you are.

Q. I'm actually very interested in the answer to this, but how would you determine what the communities of interest are within a particular congressional district?

A. Congressional districts are very large, especially when you move away from the densely populated areas. They span a large area. So it's much more difficult to define what a community of interest is when you're looking at a district that spans multiple counties.

Does that give you what you...

Q. So when you're drawing the congressional district, for instance, how do you determine what the communities of interest are?

A. Well, with all mapping you have different criteria that you consider. And in different situations, one redistricting principle might be of more importance than another.

I would say on a congressional map, the

communities of interest is not as high of a priority, say, as some of the things that you might consider, such as the splitting of the counties and the precincts, because they are so large in size.

Even the densely populated areas, congressional districts are smaller in geography, but they take into account multiple communities. Because there's not a single community that would define any given congressional district.

Q. And just to make sure I get the full answer to my question, when you're drawing a congressional district, how do you take into account communities of interest?

A. Well, as I said, I'm not sure that that's one of the things that would be high on the list of things to consider in this case, because there's just so many different communities that make up a congressional district, even, like I said, in the densely populated areas.

So I don't know that communities of interest is normally a conversation that's being held about a congressional map.

because of all the other factors you mentioned?

A. I think it was a combination of all those factors.

Q. And you actually increased the V.A.P. black voting age population and registered voter population in C.D. 2 in the 2011 plan; correct?

A. Yes. I think so.

Q. Did you increase that population because of what you perceived to be a legal requirement?

A. No. I believe Congressional District 2 was in need of -- population was low in terms of its deviation on that plan and where it fell. And to increase that population, you would go to where there was a large area of population.

And that population happened to be in a county that also had a large percentage of African-American population. So in adding that in to balance the district in size, then that also maintained that percentage, or in this case did increase it some.

Q. So if there were a county within the area where you could have increased the population

Q. Can you tell us what that is?

A. 44.83 percent if you're looking at the total black column.

Q. And is that higher or lower than the black voting age population in C.D. 2 under the 2011 plan?

A. I would think that it's lower.

Q. And you would agree that the African-Am -- that the population in C.D. 2 elected Sanford Bishop during these years when the black voting age population was 44.83 percent.

A. Yes. I believe --

Q. Is that correct?

A. -- that's true.

Q. So even when the black voting age population went lower than it is in the 2011 plan, the population in C.D. 2 was still able to elect Sanford Bishop as their representative?

A. Yes.

Q. Does that suggest that the voting age population, the black voting age population or registered voter population does not need to be as

high as it is in C.D. 2 in order for the African-American population there to elect a candidate of their choice?

A. I believe I mention that in my report specifically that there are -- even recently we have one of the lowest percentage black population districts in the state that just elected an African-American representative to Congress. So yes, I mean --

Q. Right. But I'm --

A. -- that's in here.

Q. -- talking about C.D. 2, and that's --

A. Yeah.

Q. -- not mentioned --

A. I mentioned --

Q. -- in your report?

A. Yeah. I mentioned him as well being in there, that he's been in the district and elected and continues to represent it since 1992.

Q. Right. So what I'm specifically asking, and tell me if you agree with, is that the African-American voting age population does not --

THE WITNESS: Well, when you say "lower," you mean what? Lower than what? Lower than 50 percent?

BY MR. NKWONTA:

Q. Lower than what it is currently under the 2011 plan.

A. Yes.

Q. And do you agree that the African-American population in C.D. 2 can still elect, like, a candidate of their choice with a black registered voter population lower than what it currently is in the 2011 plan?

A. Say that one more time.

Q. Sure.

Do you agree that the African-American population in C.D. 2 can still elect a candidate of their choice even if the black registered voter population is lower than what it currently is in the 2011 plan?

A. I think they can elect the candidate of their choice, yes.

Q. I want to look at the last paragraph on

then to point 34 from plan one to plan two.

Q. But the district --

A. So I wouldn't --

Q. -- is in a different location, so what -- why is that the --

A. Not really.

Q. -- relevant analysis?

A. I mean, it's still generally in the same location.

Q. Oh, it is?

A. 12? Yeah.

Q. Okay.

A. His 12 is in the same east central Georgia that the current 12 is.

Q. Okay.

A. But District 9 is in the mountains. So you're comparing a district down there to a district the compactness in the mountains?

Q. In Page 15 -- on Pages 15 to 16 of your report, you identify a few neighborhood splits, one in Muscogee County and one in Effingham in the town of Guyton.

# EXHIBIT 6

**In The Matter Of:**

*PAMELIA DWIGHT, et al. vs.*
*SECRETARY OF STATE BRAD RAFFENSPERGER*

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*WILLIAM SEXTON COOPER*
*March 27, 2019*

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Q. So let's shift gears and get into our voter registration discussions. I know that's a significant point of disagreement between you and Ms. Wright about how to deal with the voter registration issues. So, first of all, in terms of calculating the number of registered voters, your approach is to exclude unknown voters from the calculation, unknown race voters, I should say, from the calculation of voter registration by race, is that correct?

A. Correct.

Q. And implicit in doing that, you are essentially erring in terms of -- would you rather overstate the potential black population in that? Isn't that a danger of excluding the unknown race voters from that calculation?

A. In theory, yes, but unlikely. The assumption is that of the unknown voters, the breakout essentially is the same as the known voters, the other 9 percent or so.

Q. And so under Ms. Wright's method of including unknown race voters, your criticism of that method would be it essentially potentially understates the level of black voters in it?

A. Well, of course. It's assuming that not a

single person in that unknown category is black. So, you know, it's bound to be excluding African American voters. And, you know, if you look at the latest supplemental report that she filed, she's reported black registered voter registration rates in Illustrative Plan 1 and 2. I'm not sure why she didn't do it on 3. But it's right now using her method, which I consider to be flawed, District 12 has a 49.92 percent black registered voter rate, a mere 8/100ths of a point from 50 percent.

So to believe that those districts -- that those two districts, CD 12 in both instances, under the Illustrative Plan 1 and 2, to believe those two districts are under 50 percent black registered voters means that you are basically assuming that there is nobody in that unknown category who is black because all it's going to take is just a couple hundred basically to get over 50 -- well, maybe a couple hundred, four or five hundred.

So it's not reasonable to assume that the black registered voter registration in District 12 is under 50 percent. In fact, if you exclude the unknown voters, we're looking at 55 percent. And that is basically confirmed by looking also at black CVAP in District 12, which as of the midpoint of 2013-2017,

i.e., 2015, was around 51 to 52 percent black.

Q. When you're looking at the CVAP calculation for District 12, you have it down to the block group layer, correct?

A. Right.

Q. And so you're able to overlay that onto your district boundaries with some precision or are there some areas where it's not going to line up exactly?

A. Really with precision, because we're looking at a population of almost 700,000 people in a district. And so any imprecision at the block group level as you're disaggregating the blocks gets completely washed out as you reaggregate back up to the congressional level. So unlike a local plan where there can be issues that we won't even get into because it can get really messy, at a congressional level I am confident that these percentages are very close to what one would have if you did a more comprehensive survey based on the 2017 ACS, which we cannot do because the ACS is only reported for existing congressional districts, not theoretical.

Q. So let's talk a little bit about geocoding, another point of disagreement here. So let me just ask you, if you were trying to explain to